


PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number Q80984	
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number	Filed	
	10/825,243	April 16, 2004	
	First Named Inventor Olivier MARTINOT		
	Art Unit	Examiner	
	2477	Nima MAHMOUDZADEH	
<p style="text-align: center;">WASHINGTON OFFICE 23373 CUSTOMER NUMBER</p>			
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reasons(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p><input checked="" type="checkbox"/> I am an attorney or agent of record. Registration number 53,825</p> <div style="text-align: right;">  Signature </div> <div style="text-align: right;"> Marina V. Zalevsky Typed or printed name </div> <div style="text-align: right;"> (202) 293-7060 Telephone number </div> <div style="text-align: right;"> March 11, 2010 Date </div>			

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q80984

Olivier MARTINOT, et al.

Appln. No.: 10/825,243

Group Art Unit: 2477

Confirmation No.: 7788

Examiner: Nima MAHMOUDZADEH

Filed: April 16, 2004

For: A DEVICE FOR MANAGING PARAMETER MEASUREMENT IN END-TO-END
TYPE DATA STREAMS IN A MULTIDOMAIN COMMUNICATION NETWORK

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Further to the Examiner's Final Office Action dated September 16, 2009, Applicants submit this Pre-Appeal Brief Request for Review, accompanied by a Notice of Appeal.

Applicants respectfully submit that the final rejection at least of **claim 1** is improper because the cited prior art fails to teach or suggest at least (1) "monitoring means for ordering constitution of a specific measurement configuration in each measuring appliance as a function of ... a corresponding measuring process of a respective measuring appliance and overall measurement specifications" and (2) "calculation means for determining first data representative of the parameter values of overall end-to-end data streams from local measurements delivered by the configured measuring appliances," recited in claim 1.

Status of the claims as indicated by the Final Office Action

Claims 1-18, 20-22, 25, 28, and 29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Iwama (U.S. Patent No. 6,600,735) in view of Gous (U.S. Patent Application Publication No. 2002/0194316).

Claims 23 and 24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Iwama, Gous, and Maher (U.S. Patent No. 5,381,403).

Claim 27 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Iwama, Gous, and Muirhead (U.S. Patent Application Publication No. 2003/0123446).

Claims 8-10 are rejected under 35 U.S.C. § 112, first paragraph. Applicants note that, in the Advisory Action, the Examiner states that the argument submitted in the Amendment filed November 13, 2009 is persuasive and this ground of rejection of **claims 8-10** is withdrawn.

Rejection of claims 1-18, 20-22, 25, 28, and 29 over Iwama and Gous

Gous describes a changeover sequence creation module 30 which constructs a collection of routing/admission data structures 36 and calculates a bandwidth/allocation matrix for each routing/admission data structure. (Paragraph 41). Each routing/admission structure defines connections for each node and a maximum bandwidth level attributed to each connection at each stage of changeover. (Paragraph 40, Fig. 3). The bandwidth/allocation matrix represents the total bandwidth allocated to each node. (Paragraph 42).

Thus, Gous teaches constitution of a desired connection configuration by changing the configuration information maintained at the nodes. Such configuration relates to configuring connections between the nodes. Gous does not teach or suggest constitution of the specific measurement configuration based on a specific measuring process of a corresponding node and overall measurement specifications. The bandwidth matrix of Gous is to allocate the maximum bandwidth usage of a node based on the available operational bandwidth. The bandwidth matrix of Gous is not the same as or an equivalent of a specific measurement configuration. Additionally, the bandwidth matrix of Gous is not created based on the measuring process associated with the node. Nor it is a function of the measuring process and overall measurement specifications.

Further, the Examiner relies on paragraph 35 of Gous to teach calculation means to deliver data representative of the parameter values of overall end-to-end data streams from local measurements delivered by the configured measuring appliances. The Examiner asserts that the acknowledgement message is being sent to confirm the successful execution of the instructions sent to the nodes. This acknowledgment allows the module 32 to determine that the instructions were successfully executed. (See Final Office Action, page 5, paragraph 3, page 23, paragraph 3 - page 24, paragraph 1; Advisory Action, page 2).

Gous teaches the module 32 which converts the changeover sequence into a list of instructions that are communicated to the nodes. The module 32 receives acknowledgments from the nodes which have successfully executed the received instructions. (Paragraph 35).

Therefore, Gous describes delivering the instructions to the nodes and receiving acknowledgments of successful changeovers from the nodes.

However, Gous does not teach or suggest determining, by the calculation means, the data representative of the parameter values of overall end-to-end data streams, from the local measurements. The acknowledgement message is not the same as or an equivalent of the local measurements.

Iwama does not cure any deficiency of Gous.

Accordingly, neither Iwama, nor Gous, taken singularly or in combination, teaches or suggests at least “monitoring means for ordering constitution of a specific measurement configuration in each measuring appliance as a function of ... a corresponding measuring process of a respective measuring appliance and overall measurement specifications, and calculation means for determining first data representative of parameter values of overall end-to-end data streams from local measurements delivered by the said configured measuring appliances.” It is, therefore, respectfully submitted that **claim 1 and dependent claims 2-18, 20-22, 25, and 28** distinguish patentably and unobviously over Iwama and Gous.

Claim 29 recites features similar to those discussed above regarding claim 1. Therefore, arguments presented above regarding claim 1 are respectfully submitted to apply with equal force here. Therefore, it is respectfully submitted that **claim 29** distinguishes patentably and unobviously over Iwama and Gous, taken singularly or in combination.

Dependent claims 13 and 28

Claim 13 recites “main calculation module is arranged to determine said first data from local measurements delivered by the said configured measuring appliances, the said local measurement specifications, at least one value aggregation model, and at least one of said measurement models.”

The Examiner asserts that the acknowledgment is being presented and includes information regarding source node and success status. (*See* Final Office Action, page 24, paragraph 2).

As discussed above, the acknowledgement is not the same or an equivalent of the local measurements. Additionally, the Examiner does not provide any support rooted in the cited prior art for determining the first data based on the value aggregation model and the measurement model.

Accordingly, **claim 13** is patentable over Iwama and Gous.

Claim 28 recites among other elements: “each first, second and third measuring process differs from other measuring processes being executed and includes one of: a passive measuring process which collects information of each type of a data stream and of each packet of the data stream, an active measuring process which collects information on a periodic basis, or a measuring process based on a measurement model generated in advance for a corresponding network domain.”

The Examiner contends that Iwama’s elements 1705, 1709 and 1710 teach the first, second, and third measuring appliances. (Fig. 8). The Examiner further states that element 1705 enforces the bandwidth reservation, cancellation, change; element 1709 implements buffering and distribution of transmission/reception signals and controls the lines and bandwidths; and element 1710 converts speech packets. (Col. 13, lines 1-14, col. 12, lines 28-50). The Examiner also asserts that the gateways are disposed in different zones as seen in Fig. 1 of Iwama. The Examiner asserts that element 1710 is considered a passive device. (*See* Final Office Action, page 16, paragraph 3 - page 18, paragraph 2; page 25, paragraph 1).

As described by Iwama, each element 1705, 1709, and 1710 performs a different function within the same gateway, e.g., each element performs its own function. Generally, if the network element performs a function, it does not warrant a conclusion that this network element runs a measuring process to collect measurement parameters. Iwama does not teach or suggest that each of the elements 1705, 1709, and 1710 executes its own measuring process to collect the local measurements of a local end-to-end data stream traversing a corresponding domain.

Additionally, Iwama only describes converting speech data by element 1710. Iwama does not describe that element 1710 performs passive measurements. Even if element 1710 is alleged to teach passive measuring process for the data collection, each claimed measuring appliance of claim 28 performs a different measuring process including one of a passive measuring process, an active measuring process, and a measuring process based on a measurement model. Iwama does not teach or suggest that a different one of “a passive measuring process ..., an active measuring process ..., or a measuring process based on a measurement model” is performed in each of the measuring appliances.

Accordingly, **claim 28** is patentable over Iwama and Gous.

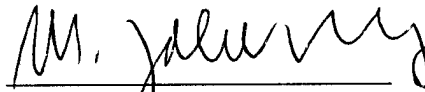
Rejection of claims 23, 24, and 27

Claims 23-24 and 27 depend on claim 1. Iwama and Gous do not meet all of the features of independent claim 1. Neither Maher nor Muirhead compensates for the above-identified deficiencies of these references. It is, therefore, respectfully submitted that **claims 23-24 and 27** depend on claim 1, they are patentable at least by virtue of their dependencies.

CONCLUSION

For at least the reasons presented above, Applicants respectfully submit that **claims 1-18, 20-25, and 27-29** are patentable, and accordingly, that the final rejection of **claims 1-18, 20-25, and 27-29** is improper. Accordingly, Applicants respectfully request the Panel to reverse the final rejection of **claims 1-18, 20-25, and 27-29** and allow the application.

Respectfully submitted,



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